

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:

**MDL No. 2804
Judge Dan Aaron Polster**

*Cabell County Commission v.
AmerisourceBergen Drug Corporation, et al.*
Case No. 17-OP-45053 – DAP

**MOTION TO DISMISS SECOND AMENDED COMPLAINT BY DEFENDANTS
CVS HEALTH CORPORATION, THE KROGER CO., RITE AID
CORPORATION, WALGREEN BOOTS ALLIANCE, INC., AND WALMART INC.**

CVS Health Corporation, The Kroger Co., Rite Aid Corporation, Walgreens Boots Alliance, Inc, and Walmart Inc., collectively the “Moving Defendants,” move to dismiss the Second Amended Complaint pursuant to Rules 12(b)(1) and 12(b)(6).

1. Plaintiff Lacks Authority to Challenge Legal Activities Otherwise Regulated by the State.
2. The Complaint fails to state a claim for relief.
3. Plaintiff has not plausibly pled any claim against the Moving Defendants as Pharmacies.
4. Plaintiff has not plausibly pled a claim for negligence.
5. Plaintiff fails to state a claim for public nuisance.
6. Plaintiff’s unjust enrichment claim fails because Plaintiff conferred no benefit on the Moving Defendants.
7. Plaintiff’s claims against Moving Defendants based on the distribution of opioids are barred by W. Va. Code §§ 30-5-21.

8. Plaintiff's claims against Moving Defendants based on their alleged dispensation of opioids are barred by the West Virginia Medical Professional Liability Act.

9. Plaintiff's civil conspiracy claim fails.

10. Plaintiff's claims are barred by the "free-public-service" doctrine.

11. Plaintiff's claims are barred by the "economic loss" doctrine.

For these reasons, and as set forth more fully in the accompanying Memorandum of Law and in the motion submitted by other parties in this action in which the Moving Defendants join, the Complaint must be dismissed.

THE MOVING DEFENDANTS

By counsel

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Case No. 1:17-OP-45053 – DAP (S.D. W. Va.)

CERTIFICATE OF SERVICE

I hereby certify that this 8th day of June, 2018, I electronically filed a copy of the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

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